

1 decision I'm certainly not going to say the arrangement that
2 Mr. Turro and Mr. Weis was consistent with the one Mr.
3 Stewart outlined based upon this sentence. It will be based
4 upon the record as a whole. I don't care what Mr. Turro
5 believed. I mean, for purposes -- Mr. Naftalin knows what I
6 am saying.

7 MR. NAFTALIN: I understand, Your Honor.

8 MR. RILEY: Your Honor, you made a comment
9 earlier, and I think it is exactly apt, the parallel to Mr.
10 La Follette's testimony that Mr. Aronowitz and Mr. Helmick
11 defended earlier, Mr. La Follette has a statement in here
12 that the practices he observed were found -- "were observed
13 by the investigators to be in flagrant violation of FCC
14 rules." Not that it was their opinion, but they were
15 observed by the investigators to be in flagrant violation.
16 But the only -- the only way that can be read is that Mr. La
17 Follette is giving that as his opinion, even though he
18 doesn't say it, and he will be examined. I think it's
19 exactly parallel.

20 JUDGE STEINBERG: Okay, the objection is
21 overruled. You know, you're not precluded from arguing in
22 findings and conclusions that the basis for his belief that
23 the agreement was consistent was not correct or was
24 unreasonable, or was fallacious or was ridiculous; that no
25 reasonable person could have believed that this was correct,

1 but you're going to have to establish that through cross or
2 other means.

3 (Pause.)

4 MR. ARONOWITZ: On page 6 at the end of the first
5 paragraph it reads, the sentence, "In another exhibit in my
6 direct case, Mr. Hurst further demonstrates that the
7 Monticello Station signal may be received off the air or
8 directly through space by the Fort Lee translator."
9 That references Exhibit T-2. Which then goes on to say
10 that, "On October 16 and 17, 1997, I inspected the receive
11 and transmit facilities at Pomona, Fort Lee," et cetera.

12 I believe, to the extent that this -- the Herman
13 Hurst statement refers to activities in October 16 and 17,
14 1997, that those are not relevant to the allegations or not
15 relevant to the issues. What happens is that the July '95,
16 which is more approximate in time to the alleged violations,
17 we are not alleging any current violations.

18 JUDGE STEINBERG: Let's save that for that
19 specific exhibit. You just -- you just basically object to
20 the reference in one exhibit to another exhibit?

21 MR. ARONOWITZ: Correct.

22 JUDGE STEINBERG: Okay. Let's take that sentence
23 out. So page 6, first full paragraph, the last sentence is
24 stricken.

25 MR. NAFTALIN: Can I ask why referring to another

1 exhibit is stricken?

2 JUDGE STEINBERG: Because I think we ought to rely
3 on Mr. Hurst for that.

4 MR. NAFTALIN: Well, we do. He does.

5 JUDGE STEINBERG: Okay, so we don't need it here.
6 And, you know, it's another thing, the exhibit speaks for
7 itself, and if the Bureau objected to it, I'm sustaining
8 that objection.

9 MR. ARONOWITZ: On page 7, on the carryover
10 paragraph, three lines up from the bottom of the carryover
11 paragraph there is a sentence that says, "In fact --

12 JUDGE STEINBERG: Okay, which -- okay, the first
13 paragraph that appears on that page?

14 MR. ARONOWITZ: The carryover paragraph.

15 JUDGE STEINBERG: Okay. How many lines up?

16 MR. ARONOWITZ: From the end of that paragraph
17 three lines up, the sentence that begins, "In fact, Mr. Weis
18 is fairly knowledgeable."

19 JUDGE STEINBERG: Okay.

20 MR. ARONOWITZ: I would exclude that sentence. I
21 think Mr. Weis would be here to --

22 JUDGE STEINBERG: What if we change that to, "It
23 is my opinion that Mr. Weis is very knowledgeable"? This is
24 his opinion. This is not going to stand for the proposition
25 that Mr. Weis is in fact knowledgeable, but that Mr. Turro

1 believes he is, or is of the opinion that he is. I mean,
2 that's the way I read it, as this being Mr. Turro's opinion.

3 (Pause.)

4 MR. NAFTALIN: Your Honor, if Mr. Turro were in
5 live testimony and we were soliciting direct examination and
6 he said, "You know, Mr. Weis is very knowledgeable about
7 radio," he would be subject whether he said, "in my opinion"
8 or anything qualifying that, he would be subject to cross-
9 examination.

10 JUDGE STEINBERG: Well, I thought I had already
11 ruled.

12 MR. NAFTALIN: Okay. I'm sorry.

13 MR. ARONOWITZ: For him.

14 JUDGE STEINBERG: For him, yes.

15 MR. ARONOWITZ: Yes, okay.

16 JUDGE STEINBERG: Yes, anything like this, I mean,
17 this is just standard, basically a standard rule in that
18 that to the extent that he expresses an opinion it's nothing
19 more than an opinion. And you've got the right to challenge
20 it.

21 (Pause.)

22 MR. ARONOWITZ: Your Honor. Your Honor, just so
23 I'm clear, on page 14 the first full paragraph, maybe one,
24 two, three, four lines down, Mr. Turro says -- Mr. Turro's
25 testimony says, "This is false. I have never attempted to

1 deceive an FCC inspector."

2 I take it that your reading of this is, "It is my
3 opinion," being Turro's, "that this is false," and that
4 Turro, in his opinion, has never attempted to deceive --

5 JUDGE STEINBERG: Correct.

6 MR. ARONOWITZ: -- an FCC inspector?

7 JUDGE STEINBERG: Subject to cross.

8 MR. ARONOWITZ: Okay. And that would be the same
9 for --

10 JUDGE STEINBERG: Well, subject to cross and
11 subject to all the other evidence in the proceeding.

12 MR. ARONOWITZ: So when he says, to put it nice,
13 "Mr. Luna and Mr. Gaghan are very mistaken," that would just
14 be an opinion?

15 JUDGE STEINBERG: Yes.

16 MR. ARONOWITZ: That he's qualified to give -- all
17 right.

18 JUDGE STEINBERG: In my opinion, they're mistaken,
19 and subject to your cross-examination of him and, of course,
20 to totality of the record of the proceeding. If the
21 totality of the record convinces me that Mr. Luna and Mr.
22 Gaghan are not mistaken, and that there was a deception of
23 Mr. Loginow, and the deception -- and that Mr. Turro
24 participated in the deception, these statements mean nothing
25 or they could mean that I could conclude that he further

1 misrepresented facts in his sworn testimony, which I have
2 done on occasion in initial decision.

3 MR. ARONOWITZ: So what really looks like a
4 conclusion is just really an opinion.

5 JUDGE STEINBERG: Basically. I mean, without
6 seeing the specifics. I don't think you have to worry about
7 me being -- me relying on these types of statements for a
8 conclusion that --

9 MR. ARONOWITZ: Well, for example, Your Honor, on
10 page 17, first -- well, the paragraph that begins,
11 "Therefore, no matter what Luna and Gaghan think they may
12 have done, it was impossible." Even skipping all of that --

13 JUDGE STEINBERG: Right.

14 MR. ARONOWITZ: -- to where it goes down to,
15 "Certainly they have no detailed understanding of how the
16 Jukebox Radio operations work."

17 Well, I'm not certain that Mr. Turro is qualified
18 to say what Mr. Luna and Mr. Gaghan may or may not know, but
19 I guess you're reading that to be in his opinion they have
20 no --

21 JUDGE STEINBERG: This is his position is they
22 don't have detailed understanding. You get him up on the
23 stand and you have at him. Didn't they do this? Didn't
24 they do that? Didn't you teach them this? Didn't you teach
25 them that? And isn't it a fact that? He may be completely

1 wrong. Because the next sentence, "Neither of them had any
2 significant technical or engineering knowledge in 1995, in
3 the Jukebox Radio." You put Mr. Luna on and, you know, and
4 Mr. Luna testified he has a degree in electrical
5 engineering, and he worked, you know, for 26 years as a
6 technical consultant for a string of 43 stations in 27
7 states, and he's a contract engineer, and, you know, that
8 dispel or that disproves his statement.

9 Then Mr. Turro can be rehabilitated. "Gee, I
10 didn't know he did all of that. He certainly acted like a
11 dummy in front of me."

12 (Pause.)

13 JUDGE STEINBERG: Don't argue. Let's just get on
14 to the next one.

15 MR. ARONOWITZ: Sorry, we don't mean to. We're
16 discussing amongst ourselves so we can hopefully expedite
17 this.

18 MR. NAFTALIN: Can we move on?

19 JUDGE STEINBERG: Well, I say can we move on?

20 MR. NAFTALIN: I thought he was giving up.

21 MR. ARONOWITZ: Oh, no, no, no.

22 JUDGE STEINBERG: No, you're right. Anything he
23 says here is his opinion, and he's got -- everybody's got
24 the right to his opinion. His opinion may be baseless
25 though and maybe given no consideration by me, which is an

1 important caveat.

2 MR. ARONOWITZ: Your Honor, we're just trying to
3 keep it together here.

4 Page 29, the last line, "Several exhibits to my
5 direct case are letters which establish the Jukebox Radio
6 serves the public interest." We will be objecting to those
7 letters -- to those exhibits when we get there, so we would
8 just like to exclude that sentence.

9 JUDGE STEINBERG: If appropriate, we will exclude
10 it at the appropriate time. If there aren't any letters
11 left, then the sentence won't mean anything.

12 MR. ARONOWITZ: Okay.

13 MR. HELMICK: Your Honor, page 30, I want to -- I
14 would object from Universal's standpoint the first paragraph
15 and the second paragraph.

16 JUDGE STEINBERG: Which is everything down to "My
17 counsel"?

18 MR. HELMICK: That's correct.

19 MR. RILEY: Your Honor, I know this Mr. Turro's
20 exhibit, but I would, if I could, like to make a comment on
21 Mr. Helmick's objection.

22 I said earlier there is a matter not being argued
23 in this case that has some bearing on Universal's complaint,
24 and that matter is that Universal filed while MMBI had
25 pending an application for license and didn't serve MMBI.

1 It was an ex parte attack on MMBI's license application.

2 I think that what MMBI did is fairly characterized
3 here by Mr. Turro, and it is clearly his opinion, as you
4 have said.

5 JUDGE STEINBERG: Mr. Naftalin?

6 MR. NAFTALIN: Your Honor, Mr. Turro is already on
7 record suggesting that the Bureau has been misled in this
8 proceeding, and that this proceeding was instigated by
9 Universal. This, again, is his view. I mean, he offers his
10 direct testimony. If he were asked a question on the stand
11 in live testimony, "Why do you think we're in this
12 proceeding today," and he gave this answers, he would give
13 this answer.

14 Also, there is at least one very direct assertion
15 of fact in the middle of the paragraph, a couple of
16 sentences where he talks about how William Gaghan, who is a
17 witness in this proceeding, publicly threatened him in a
18 restaurant. Clearly, that's relevant testimony too.

19 JUDGE STEINBERG: Okay. Objection is sustained in
20 part. The first sentence is stricken, which begins,
21 "Finally, I state," through line four, "FCC rules violations
22 on my part," that sentence is stricken. This is not
23 relevant.

24 The second sentence is okay. That's, "I know that
25 william Gaghan." The third sentence through the end of the

1 paragraph is stricken beginning, "I believe that the
2 owners."

3 MR. ARONOWITZ: Excuse me. You go from "I know" to
4 "summer of '96"?

5 MR. NAFTALIN: That's two sentences.

6 JUDGE STEINBERG: Oh, is that two sentences? Yes,
7 I'm sorry, two sentences.

8 MR. ARONOWITZ: Those are in?

9 JUDGE STEINBERG: "I know" from through "summer of
10 '96, the Beehive Restaurant," that's left in.

11 MR. ARONOWITZ: Right.

12 JUDGE STEINBERG: The remainder of the paragraph
13 is stricken.-

14 MR. ARONOWITZ: Right.

15 JUDGE STEINBERG: And this next paragraph is
16 stricken, "This proceeding."

17 Okay, with those ruling Turro Exhibit 1 is
18 received.

19 (The document referred to,
20 having been previously marked
21 for identification as Turro's
22 Exhibit No. 1, was received
23 into evidence except for noted
24 sentences and paragraphs.)

25 MR. NAFTALIN: Exhibit 2, Your Honor, Mr. Turro

1 Exhibit 2 is the statement of Herman E. Hurst, Jr. It is a
2 six-page statement with several attachments to them. The
3 attachments, when they are more than one page, have been
4 serially numbered.

5 JUDGE STEINBERG: Yes, I wanted them numbered, the
6 first page numbered one, and then go to the very end so that
7 we wouldn't have to sit here counting pages. I get 15 pages
8 total, and the document is marked for identification as
9 Turro Exhibit 2.

10 (The document referred to was
11 marked for identification as
12 Turro Exhibit 2.)

13 JUDGE STEINBERG: Any objection?

14 MR. ARONOWITZ: Yes, Your Honor. Pretty much I
15 object to the -- pretty much to all of the exhibit insofar
16 as it describes a testing and activities on or about October
17 16 and 17, 1997. Your Honor, it's our position that the
18 only relevant matter in here is his findings contained in
19 the statement dated July 25, '95, which are attached herein.
20 Mr. Turro --

21 JUDGE STEINBERG: That's Attachment B, is that
22 correct?

23 MR. ARONOWITZ: Attachment B, as I see it,
24 correct. And that everything else that describes
25 essentially his current operation is not relevant.

1 JUDGE STEINBERG: Mr. Naftalin?

2 MR. NAFTALIN: Your Honor, first of all, the
3 hearing designation order is not limited in time. You can't
4 tell whether it's attempting to determine a violation -- a
5 period of time of violation which has come to an end.

6 Number two, given that this is our first
7 opportunity to address this matter, Mr. Turro acquired
8 further testimony from an expert to address whether a
9 fundamental issue in this case, which is whether the Fort
10 Lee translator is capable of receiving a signal from the
11 Pomona translator and from the Monticello FM station.

12 I presume that Bureau counsel is free to attack
13 this and prove that radio waves in 1997 propagate
14 differently from radio waves previously, but -- and they can
15 certainly cross-examine --

16 JUDGE STEINBERG: Wait. Let him finish.

17 MR. NAFTALIN: -- cross-examine Mr. Hurst not only
18 about the strength of his study performed in July of 1995,
19 but his more recently study which adopts the July 1995 study
20 and elaborates upon it.

21 JUDGE STEINBERG: Mr. Riley, any comments?

22 MR. RILEY: No, I don't have anything.

23 MR. ARONOWITZ: Your Honor, certainly the Bureau
24 would not be taking the position that radio waves in '97 are
25 any different from radio waves in '95. however, Mr. Turro

1 has stated throughout his testimony, and it is the testimony
2 of Mr. Hurst that -- and it's all within here -- that the
3 Jukebox Radio facility was undergoing constant change, and
4 it is clear from here that the facility in '97 did not
5 necessarily bear any relation to the facility in '95.

6 While it is true that signals in '97 are the same
7 as signals in '95, there are questions as to how much
8 equipment was added, how much other materials were added to
9 this facility, and it is fairly clear from the statements
10 here that the '97 facility is not the '95 facility.

11 Therefore, I agree with Mr. Naftalin's perception
12 that while the hearing designation order does not limit the
13 amount of violation, I think we could stipulate that after a
14 date -- after a date that I live is August '95, we have no
15 information as to whether -- we have nothing to dispute that
16 Mr. Turro was not operating as he said. Our main focus
17 appears to be between, or all events leading up to August
18 '95.

19 JUDGE STEINBERG: Okay, let --

20 MR. ARONOWITZ: And there is nothing in the HDO
21 that contradicts that.

22 JUDGE STEINBERG: Okay, I think my reading of the
23 HDO is that it doesn't concentrate on the period of October
24 16 and 17, '97. To the extent -- however, to the extent --
25 here is what I am going to do. I am going to receive the

1 exhibit, but, and this is a big "but," it's got to be
2 established that the facility that Mr. Hurst inspected in
3 October '97 was substantially the same facility that relates
4 to his statement of July '95.

5 MR. RILEY: Your Honor?

6 JUDGE STEINBERG: And if it's not substantially
7 the same facility, then practically no weight is going to be
8 given to the first six pages of this exhibit.

9 Let me also state that there came a point in time
10 when Mr. Turro knew that a complaint had been filed against
11 him, and that the complaint alleged certain things. From
12 that point forward, I don't know what that point is, but
13 from that point forward an argument could be made that the
14 search light, so to speak, was on Mr. Turro and Mr. Turro's
15 operations. So that everything he did after that date is
16 not entitled to much weight, but entitled to very little
17 weight. And I would cite an RKO case in the comparative
18 renewal area, which I don't have the cite to off the top of
19 my head, but I cited it in the last initial decision that I
20 wrote, which I would commend to all of you if you are ever
21 in need of a sleep aid. And I can get the cite for you, but
22 it is an RKO case says that after the -- it was a case with
23 a competing application was filed so the rule applicant knew
24 that careful scrutiny would be given to its operations, and
25 the Commission held that very little weight is to be given

1 for that.

2 And I would do the same thing here. But if they
3 were substantially the same facility, then you can make a
4 circumstantial case that what was true in '97 is what was
5 true in '95, but the burden to do that is on Mr. Turro.

6 MR. ARONOWITZ: Your Honor.

7 JUDGE STEINBERG: Any other objections to No. 2?

8 MR. ARONOWITZ: With that said, Your Honor, I was
9 hoping that maybe I can cut through this a little bit.
10 There is a video tape that is also a proffered exhibit,
11 which we will get to, and on that video tape, if I'm not
12 mistaken, Mr. Hurst says, as he's taking us around the
13 October 16 - 17, '97 Fort Lee translator, he says something
14 along the lines of, "This is the third generation of this
15 particular station."

16 JUDGE STEINBERG: Well --

17 MR. ARONOWITZ: Which pretty much substantiates
18 that it's not the same.

19 JUDGE STEINBERG: Well, you ask him about that.

20 MR. NAFTALIN: Cross-examine.

21 JUDGE STEINBERG: And you ask him about that. You
22 know, it's your job to do the opposite of what he's going to
23 do, and that's why we are here. That's why we are going to
24 be here the next couple of weeks to do stuff like that.

25 Now, I have to confess that I was going to bring

1 the video tape home with me over the weekend to look at it
2 but I forgot it, so I don't know what the video tape says,
3 but I did listen to the audio tapes in my office. It's very
4 nice music to read your e-mail by.

5 MR. NAFTALIN: I will pass that on to Mr. Turro,
6 Your Honor.

7 JUDGE STEINBERG: You know, again let the record
8 reflect humor. You were sarcasm and whatever else you want
9 to throw in.

10 MR. RILEY: Overcome by building exhaustion.

11 MR. NAFTALIN: Third degree and light headedness.

12 JUDGE STEINBERG: The odor in here hasn't gotten
13 any better. Okay, can we -- so with that caveat, Exhibit 2
14 is received.

15 (The document referred to,
16 having been previously marked
17 for identification as Turro
18 Exhibit No. 2, was received
19 into evidence.)

20 MR. NAFTALIN: Your Honor, I would like to
21 introduce Turro Exhibit 3, the statement of Paul A.
22 Einreinhofer; five pages long.

23 JUDGE STEINBERG: Okay, the document described
24 will be marked for identification as Turro Exhibit 3.

25 (The document referred to was

1 marked for identification as
2 Turro Exhibit No. 3.)

3 MR. ARONOWITZ: I have no objection, Your Honor.

4 JUDGE STEINBERG: Pardon me?

5 MR. ARONOWITZ: No objection, Your Honor.

6 JUDGE STEINBERG: What's the relevance of this and
7 what's the purpose for which this is being offered?

8 MR. NAFTALIN: Your Honor, it's offered to support
9 Mr. Turro's testimony that there was a period of time in
10 which he had the microwave station operating, and that its
11 use was in the event that there is an emergency, to put
12 emergency messages on the translator in cooperation with the
13 county's Emergency Management Agency in the event that that
14 kind of activity was necessary. And Mr. Einreinhofer is --
15 I'm not completely sure of the title. He completely runs
16 the Emergency Management Agency for the Bergen County area
17 and he is supporting Mr. Turro's statement. They have a
18 cooperative undertaking.

19 JUDGE STEINBERG: Exhibit 3 is received.

20 (The document referred to,
21 having been previously marked
22 for identification as Turro
23 Exhibit No. 3, was received
24 into evidence.)

25 JUDGE STEINBERG: Do you want Mr. Einreinhofer for

1 cross-examination?

2 MR. HELMICK: Yes, Your Honor.

3 MR. NAFTALIN: Yes, Your Honor.

4 JUDGE STEINBERG: So you got to produce him.

5 MR. NAFTALIN: Yes, Your Honor.

6 MR. NAFTALIN: Turro Exhibit No. 4, Your Honor, is
7 a statement of William H. Owen, four pages.

8 JUDGE STEINBERG: The document described will be
9 marked for identification as Turro Exhibit 4.

10 (The document referred to was
11 marked for identification as
12 Turro Exhibit No. 4.)

13 JUDGE STEINBERG: Any objection?

14 MR. ARONOWITZ: Your Honor, on page 3, the last
15 paragraph, the last one, two lines, I guess, "After leaving
16 Jukebox Radio" down to "an FCC employee," we would move to
17 strike that as hearsay; lack of personal knowledge. Mr.
18 Gaghan will be here.

19 JUDGE STEINBERG: So basically the last two
20 sentences, "After leaving Jukebox Radio," and "Mr. Gaghan
21 expressed views"?

22 MR. ARONOWITZ: Right.

23 JUDGE STEINBERG: Okay, Mr. Naftalin?

24 MR. NAFTALIN: Your Honor, one exception to the
25 hearsay rule are statements, prior statements by a witness.

1 Mr. Owen is making an assertion about statements or
2 positions taken by Mr. Gaghan, who is a witness in this
3 proceeding. It also, even if that were not to be the case,
4 it should be admitted, at least to the extent of testing Mr.
5 Gaghan's credibility.

6 JUDGE STEINBERG: Okay, the objection is
7 overruled. From reading these two sentences, it looks to me
8 like he's got personal knowledge of something, and exactly
9 what it is we're going to find out. So the objection is
10 overruled and the -- is that the only objection you had to
11 this exhibit?

12 MR. ARONOWITZ: Yes, Your Honor.

13 JUDGE STEINBERG: Okay, Exhibit 4 is received.

14 (The document referred to,
15 having been previously marked
16 for identification as Turro
17 Exhibit No. 4, was received
18 into evidence.)

19 JUDGE STEINBERG: And do you want Mr. Owen for
20 cross?

21 MR. HELMICK: Yes, Your Honor.

22 MR. ARONOWITZ: Yes, Your Honor.

23 JUDGE STEINBERG: Okay.

24 MR. NAFTALIN: Your Honor, Turro Exhibit No. 5 is
25 a statement of David Charles Lynch; five pages.

1 JUDGE STEINBERG: The document described will be
2 marked for identification as Turro Exhibit No. 5.

3 (The document referred to was
4 marked for identification as
5 Turro Exhibit No. 5.)

6 MR. ARONOWITZ: Your Honor, we object to the
7 entire exhibit. It appears to be not relevant. The time
8 frame is off.

9 JUDGE STEINBERG: Let me look at it again.

10 MR. ARONOWITZ: For example, even in terms of the
11 time frame, he says he has no knowledge, but he was told by
12 Turro what they were able to do. Given the time frame, and
13 the summer of '96, which is not really -- we're back in the
14 beehive.

15 JUDGE STEINBERG: Okay, now, he was -- he was at
16 Jukebox Radio since July of '95?

17 MR. NAFTALIN: That's correct.

18 JUDGE STEINBERG: And when were the inspections?

19 MR. NAFTALIN: We know of inspections in April,
20 April and May of '95; July of '95; and August of '95; and
21 June of '97, Your Honor.

22 JUDGE STEINBERG: Okay, so he was at Jukebox Radio
23 during the time of some of the inspections.

24 MR. ARONOWITZ: All right. But, Your Honor?

25 JUDGE STEINBERG: Yes?

1 MR. ARONOWITZ: The only --

2 JUDGE STEINBERG: I think the testimony he offers
3 is -- I mean, this is for the purpose of -- the hearing
4 designation order makes reference to times and at Jukebox
5 Radio -- WJUX was off the air, and Monticello, but that
6 there was still programming going on in the New Jersey area;
7 is that correct?

8 MR. ARONOWITZ: Um-hmm.

9 MR. NAFTALIN: Allegations of that, yes, Your
10 Honor.

11 JUDGE STEINBERG: Right. And is that what this
12 exhibit is addressing?

13 MR. NAFTALIN: Certainly some of it does, Your
14 Honor. If there is a stipulation offered by the Bureau that
15 from a certain date forward the Bureau areas that Mr. Turro
16 was in compliance with the FCC's rules, we can talk about
17 time frames. But until there is such a thing, we feel it
18 necessary to defend everything out there.

19 Also, Mr. Charles -- I'm sorry, Mr. David Charles
20 Lynch also reaffirms something about Mr. Gaghan on the
21 second to the last page.

22 MR. RILEY: And, Your Honor, he speaks about the
23 programming that comes from Jukebox Radio, the production
24 center, to WJUX dealing with Sullivan County, which is
25 clearly in the Bureau's view of this case of some relevance.

1 MR. ARONOWITZ: Your Honor, the inspections that
2 occurred in July of '95 and August of '95 relate to the link
3 and whether the link was on or off pursuant to a letter of
4 the Wireless Telecommunications Bureau. I think it's been
5 developed ad nauseam in pleadings that the Mass Media Bureau
6 did not -- did not order those investigations, and I
7 believe, to the best of my knowledge, we said that they
8 weren't being relied upon -- they were not relied upon us in
9 preparation of the HDO.

10 And I believe that the inspections that occurred
11 in July and August of '95 have nothing to do with the
12 relationship between WJUX and Jukebox so much as it did the
13 use of the link. And I believe those are the '95
14 inspections.

15 JUDGE STEINBERG: Okay, I am going to allow the
16 exhibit, receive the exhibit. I think there is enough in
17 here that is relevant to that, and also, there is also
18 material in here which relevant to Mr. Gaghan.

19 JUDGE STEINBERG: So I will receive Exhibit 5.

20 (The document referred to,
21 having been previously marked
22 for identification as Turro
23 Exhibit No. 5, was received
24 into evidence.)

25 MR. NAFTALIN: Thank you, Your Honor.

1 JUDGE STEINBERG: And do you want this individual
2 for cross?

3 MR. ARONOWITZ: Yes, Your Honor.

4 JUDGE STEINBERG: So Mr. Lynch will be made
5 available for cross.

6 MR. NAFTALIN: Next, Your Honor, we would propose
7 Turro Exhibit No. 6. It's a statement of Chuck Garland; one
8 page.

9 JUDGE STEINBERG: The document described will be
10 marked for identification as Turro Exhibit No. 6.

11 (The document referred to was
12 marked for identification as
13 Turro Exhibit No. 6.)

14 MR. ARONOWITZ: We have no objection, Your Honor.

15 JUDGE STEINBERG: Okay, Exhibit 6 will be
16 received.

17 (The document referred to,
18 having been previously marked
19 for identification as Turro
20 Exhibit No. 6, was received
21 into evidence.)

22 JUDGE STEINBERG: Do you want Mr. Garland for
23 cross?

24 MR. ARONOWITZ: Yes, Your Honor.

25 JUDGE STEINBERG: And before I forget, all the

1 witnesses are going to be sequestered. Mr. Turro can remain
2 in the room. Mr. Weis can remain in the room because they
3 represent -- and I guess Mr. Warshaw, if he wants to, can
4 sit in here because he's a party to this proceeding and may
5 be able to render assistance to Mr. Helmick.

6 I don't have any problem with the engineers
7 sitting in to hear the other engineers' testimony, but if
8 there is an objection or the parties think that it would be
9 better for the engineers to be sequestered, then I would
10 abide by your wishes.

11 I don't have any problem with Mr. Loginow sitting
12 in throughout the whole proceeding to assist the Bureau.
13 That's the closest they are going to come to a client.

14 All the other witnesses are to be sequestered, and
15 I would -- and no -- except for the people we are talking
16 about, you know, the engineers, Mr. Warshaw, Mr. Loginow
17 after his deposition, no counsel is to inform any of the
18 witnesses, no counsel in this -- and this goes to Mr. Weis
19 and to Mr. Turro and Mr. Warshaw and Mr. Loginow -- nobody
20 who has heard all the testimony is to tell any of the
21 witnesses what anybody else testified to until this whole
22 case is finished. I mean, until the hearing is concluded
23 because I want everybody reacting to what they hear in the
24 hearing room and not -- I want to see if we can --

25 MR. RILEY: Your Honor?

1 JUDGE STEINBERG: -- get some testimony that
2 hasn't been entirely rehearsed.

3 MR. RILEY: Your Honor?

4 JUDGE STEINBERG: Mr. Riley has got a question
5 about that.

6 MR. RILEY: Well, I do. I would like to go back,
7 Your Honor, ask you to revisit your comment about Mr.
8 Loginow and his presence during the hearing.

9 Mr. Aronowitz has been scrupulous in maintaining
10 throughout this proceeding and in the discovery stage that
11 far from being Mr. Loginow's lawyer, or alternatively, Mr.
12 Loginow --

13 JUDGE STEINBERG: Yes.

14 MR. RILEY: -- being his client, that he is from a
15 wholly separate bureau which the Mass Media has no control.
16 To the extent that Mr. Aronowitz has a client, it's either
17 the chairman of the Commission or Mr. Stewart.

18 JUDGE STEINBERG: It's not the chairman because if
19 it was the chairman then he --

20 MR. RILEY: They he couldn't decide the case.

21 JUDGE STEINBERG: -- couldn't decide the case.

22 MR. RILEY: It's Mr. Stewart, it's Mr. Stewart.
23 And if Mr. Loginow is present, in the order of witnesses he
24 will go first. Mr. Blabey and Ms. Montana may not hear Mr.
25 Loginow. If Mr. Loginow is allowed to be present during